UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JORGE ARMANDO ALMANZA TORRES,	:	
	:	
Plaintiff	:	**CIVIL ACTION NO. 3:13-1010**
	:	
v.	:	**(MANNION, D.J.)**
	:	**(CARLSON, M.J.)**
UNITED STATES OF AMERICA,	:	
	:	
Defendant		

MEMORANDUM

Pending before the court is a report and recommendation filed by Magistrate Judge Carlson on January 13, 2014 to which no objections have been filed. (Doc. No. 21). Judge Carlson's report recommends the plaintiff's single-count complaint for food poisoning under the Federal Torts Claim Act (FCTA), 28 U.S.C. §§ 2401, 2675, (Doc. No. 1), be dismissed with prejudice. Judge Carlson determined the complaint should be dismissed because the plaintiff did not oppose the defendant's motion to dismiss, (Doc. No. 17), failed to prosecute his case in violation of Fed. R. Civ. Pro. 41, and because his claim fails as a matter of law, warranting dismissal under Rule 12(b)(6).

I. STANDARD OF REVIEW

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern.,*

Inc., 702 F.Supp.2d 465, 469 (2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

II. DISCUSSION

In his report, Judge Carlson first concludes that dismissal is warranted because the plaintiff failed to comply with Local Rules 7.6 and 83.18. Local Rule 7.6 requires a non-moving party to reply to a motion within seven days of service of the opposing party's brief. "Any party who fails to comply with this rule shall be deemed not to oppose such motion." LR 7.6. The plaintiff did not respond to the defendant's motion to dismiss, therefore it is appropriate to deem the motion unopposed. The plaintiff has further failed to update his current mailing address since his release on November 20, 2013. (Doc. No. 20).

Moreover, in line with *Stackhouse v. Mazurkiewicz,* 951 F.2d 29, 30 (1991), Judge Carlson reviewed the merits of the complaint. The plaintiff alleges in his complaint that he presented his claim to the Federal Bureau of Prison's (BOP) Northeast Regional Office as required by 28 U.S.C. §2675(a). He further alleges his claim was denied, thereby demonstrating administrative exhaustion. (Doc. No. 1). However, as part of the motion to dismiss, the defendant produced

a declaration from the supervisory paralegal from the BOP's Northeast Office. She specifically states the plaintiff failed to file a claim pursuant to the FCTA. (Doc. No. 18, Exh. 1). As such, the plaintiff has failed to avail himself of his administrative remedies and dismissal is appropriate. *Roma v. U.S.*, 344 F.3d 352, 362 (3d Cir. 2003).

Finally, the court is satisfied with Judge Carlson's recommendation that the case be dismissed pursuant to Rule 41 and *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984). Judge Carlson thoroughly discussed and evaluated the six *Poulis* factors in light of the plaintiff's *pro se* status, his failure to prosecute, his legally deficient complaint, and the prejudice the defendant will face. As such, Rule 41 is also proper grounds for dismissing this matter. The same reasons for granting dismissal under Rule 41 also support dismissing this claim with prejudice.

IV. CONCLUSION

For the reasons discussed above, Judge Carlson's report and recommendation is **ADOPTED IN FULL** and the plaintiff's complaint is **DISMISSED WITH PREJUDICE**. An appropriate order shall follow.

s/ *Malachy E. Mannion*
MALACHY E. MANNION
United States District Judge

Date: February 3, 2014

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